UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/Sub.2/1991/NGO/16
6 August 1991

ENGLISH
Original: SPANISH

COMMISSION ON HUMAN RIGHTS

Sub-Commission on Prevention of
Discrimination and Protection
of Minorities
Forty-third session
Agenda item 6

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING POLICIES OF RACIAL DISCRIMINATION AND SEGREGATION AND OF APARTHEID, IN ALL COUNTRIES, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES: REPORT OF THE SUB-COMMISSION UNDER COMMISSION ON HUMAN RIGHTS RESOLUTION 8 (XXIII)

Written statement submitted by the International Federation of Human Rights, a non-governmental organization in consultative status (category II)

The Secretary-General has received the following communication, which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[30 July 1991]

GE.91-12631/2184H

QUESTION OF ENFORCED OR INVOLUNTARY DISAPPEARANCES

1. It is common international knowledge that Guatemala was the first country in Latin America in which the inhuman practice of enforced or involuntary disappearances appeared and that it is the country in which the highest number of cases in proportion to the population have been recorded in recent decades. According to figures given in the report which the Working Group on Enforced or Involuntary Disappearances submitted to the Commission on Human Rights at its forty-seventh session, Guatemala has the third highest number of cases of enforced disappearances in the world. In that report, the Working Group indicates that 2,972 cases are outstanding, although it should be borne in mind that this figure hardly reflects the real number of disappearances because the great majority of cases are not reported through fear of reprisals, as the Working Group pointed out after its visit to Guatemala in 1987.

2. Guatemalan society continues to suffer from the phenomenon of enforced or involuntary disappearances. Between 1 January and 31 May 1991, 36 cases were documented; the perpetrators continue to be "unidentified, heavily armed men" - in other words, members of the clandestine apparatus of repression.

3. Among these cases attention should be drawn to that of Santos Toj Reinoso, a member of the Runujel Junam Council of Ethnic Communities (CERJ), which occurred on 26 May 1991 in the Department of El Quiché, and that of the social worker Enma Elizabeth Pérez de Cojulún, a professor at the University Centre of the West (CUNOC), which occurred as she was travelling between Escuintla and Quezaltenango on 29 May 1991.

4. The more than 40,000 cases of enforced or involuntary disappearances that have occurred in Guatemala, as estimated by the country's human rights organizations, have remained totally unpunished; this is perhaps the most important factor making for disappearances, as the Working Group on Enforced or Involuntary Disappearances correctly indicated in its above-mentioned report.

5. In the case of Guatemala we must draw attention to the existence of the clandestine apparatus of repression, which works through "unidentified men" as one of the best ways of maintaining and guaranteeing impunity in these crimes against humanity. The clandestine apparatus of repression, according to the conclusions that we can draw from numerous accounts received and stored in the archives of the Guatemalan Commission on Human Rights (CDHG), which is a member of our organization, operates under the direct control of the country's armed forces, which alone can have the criminal intent, the material and human resources and the indispensable protection of the State apparatus needed to carry out the disappearance process, in which victims are arrested without a warrant, taken away and held in clandestine prisons, subjected to cruel, inhuman and degrading treatment and punishment and then, almost always, extrajudicially executed.

6. A further proof of the existence of this clandestine apparatus is the case of Mrs. Lilian Cristina Arenal Tárano de Sandoval, who was temporarily detained shortly after arriving from Chimaltenango, where she lives, by two

unidentified men and a woman in a vehicle with tinted windows in the Colonia Tikal, Guatemala City. The unknown persons took her to a dwelling on the outskirts of the city and interrogated her for several hours on the subject of a person named Mario. When she insisted that she did not know him, the unknown persons said they had made a mistake and took her away in the same vehicle, leaving her at kilometer 29 on the Pan-American Highway, in the administrative area of San Lucas Sacatepéquez. Her case is one of the few in which the victim managed to escape alive.

7. The existence of this clandestine apparatus of repression, a term which we prefer to "death squads" because the latter are not members of the apparatus and operate under a name or acronym specially adopted at a particular time, is an "open secret" in Guatemala, although until very recently only a few organs of the press had referred to it.

8. The absence of any judicial identification of the persons responsible for the disappearances is an obstacle to any investigation: although cases are brought before the courts, they are almost always dismissed because there is no one to accuse. Responsibility for this lies with the Government Procurator's Office, which does not initiate exhaustive investigations, and with the judges themselves, who, generally out of fear, do not require the Procurator's Office to enforce the law. All this helps to perpetuate the impunity.

9. Another phenomenon closely linked to the practice of enforced or involuntary disappearances is the discovery of clandestine cemeteries. A huge number of these have been found in the municipalities of Zacualpa, Chichicastenango, Joyabaj, San Andrés Sajcabajá and Santa Cruz del Quiché, in the departments of El Quiché and Chimaltenango. On 9 June 1991 the National Coordination of the Widows of Guatemala (CONAVIGUA) reported the existence of a clandestine cemetery in the canton of Chuantalá, Chichicastenango, in which the bodies of more than 100 persons who disappeared in the early 1980s are said to be buried.

10. Since its formation seven years ago, the Mutual Support Group (GAM) of relatives of missing persons has been seeking the establishment of a commission to investigate the whereabouts of missing persons. In May 1991 the Office of the Human Rights Attorney set up such a commission, but it did not want national or international non-governmental organizations to form part of it, as had been proposed by GAM.

11. The establishment and entry into operation of this commission in the form requested by the missing persons' relatives will represent progress towards ascertaining the truth and administering justice. In view of the ineffectiveness of the judicial system and the great need to shed light on the fate of thousands of missing persons, it is only right that the Mutual Support Group and other grass-roots and national human rights organizations and international non-governmental organizations should be included in the commission of inquiry, so that they can contribute to the effectiveness and impartiality of the investigation.

12. In view of the foregoing, the International Federation of Human Rights (IFHR), which has recently published a report on the human rights situation in

Guatemala after sending a mission there in April, considers it necessary for the Sub-Commission on Prevention of Discrimination and Protection of Minorities to adopt a resolution in which it expresses, inter alia, its concern at the persistence of the practice of enforced or involuntary disappearances in Guatemala and the absolute impunity with which those responsible for these crimes against humanity are operating. The judiciary should be called upon to initiate and follow through investigations into cases of enforced or involuntary disappearance and other violations of human rights under civilian jurisdiction, regardless of whether those held to be responsible are members of the armed forces. This would help to combat the impunity that is doing so much harm to Guatemalan society.

UNITED NATIONS

E

Economic and Social Council

Distr.
GENERAL

E/CN.4/Sub.2/1991/NGO/17
7 August 1991

ENGLISH
Original: FRENCH

COMMISSION ON HUMAN RIGHTS

Sub-commission on Prevention of
Discrimination and Protection
of Minorities
Forty-second session
Agenda item 6

INDEPENDENCE AND IMPARTIALITY OF THE JUDICIARY, JURORS AND ASSESSORS AND THE INDEPENDENCE OF LAWYERS

Written statement submitted by the International Federation of Human Rights, a non-governmental organization in consultative status (category II)

The Secretary-General has received the following communication, which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[30 July 1991]

1. In its resolution 1990/23 the Sub-Commission requested Mr. Louis Joinet to bring to its attention examples of measures or practices that had had the effect of strengthening or undermining the independence of the judiciary and the protection of lawyers in accordance with United Nations standards.

2. The International Federation of Human Rights (IFHR) is gratified at the decisions of the Commission on Human Rights and the General Assembly which, at their most recent sessions, hailed with satisfaction the mandate thus

entrusted to the Special Rapporteur. The IFHR considers this mandate both as an end result - that of nearly 10 years of deliberations by the Sub-Commission on the subject - and as a starting point - that of a new, more informative approach on the subject.

3. From this viewpoint, the IFHR would like to inform the Sub-Commission and its Special Rapporteur concerning measures and practices affecting the independence of the judiciary in Pakistan, with particular reference to paragraphs 1 and 2 of the Basic Principles on the Independence of the Judiciary (adopted in 1985), which stipulate that: "The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary." (para. 1); and that "The judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason" (para. 2).

4. The IFHR has found that there exists in Pakistan a tradition concerning the subordination of the higher judiciary to the executive. In 1981 President Ali Bhutto obtained the power to transfer judges from one court to another without their consent and to restrict to four years the term of office of Supreme Court judges. Under the martial law regime established by General Ziah, apart from the power given to the military courts, which were free from any control by the judiciary, the Supreme Court and High Court judges were required to take an oath of allegiance - about 16 of them refused to do so and were immediately dismissed, as was Mr. Dorab Patel. The same Presidential Decree (dated 14 March 1981) empowered the President to appoint High Court judges temporarily to the Supreme Court and extended his power to transfer them from one court to another or to a Sharia court for two years and to consider them as having resigned in case of refusal.

5. Before terminating martial law, General Ziah had the Constitution changed so as to prevent the judiciary from invalidating any proceedings or any action instituted by those administering martial law. Several years have passed without any change being made to these provisions, which the IFHR considers are such as to allow and indeed encourage the executive to exert pressure upon the judiciary

6. It is the President of Pakistan who appoints judges to the Supreme Court and the High Courts after consultation with the Chief Justice, and those appointments may be "provisional". Where judges of the lower courts are concerned, the appointments are made by the the governor of the respective province. The judges presiding over the Special Courts are also appointed by the President, who suddenly proceeded on the eve of the 1990 elections to appoint 19 new High Court judges, together with the judges put in charge of the special proceedings instituted against the members of Mrs. Bhutto's Government. This armoury of provisions is used by those in power to reduce the judiciary to a state of dependence of which there is widespread criticism in Pakistan.

7. In its report for 1990 Pakistan's Committee on Human Rights cites the case of a judge (Mr. Qazi Jamil) provisionally appointed to the High Court of Peshawar and finally dismissed in pursuance of a decision handed down by the President of the Provincial Assembly. After obtaining a stay of proceedings from the Supreme Court, the President of Pakistan confirmed the appointment of the provisional judges who had opposed the vote of censure, only Judge Qazi Jamil, who had supported it, being dismissed. The affair caused a great stir in Pakistan and is regarded as a warning given by the executive to judges tempted to challenge its actions.

8. Another typical case is that of Judge Abdul Hafeez Memon of the Supreme Court, who was appointed provisionally and dismissed with no reason given in October 1990, but of whom it is purportedly believed that he was punished for having been the candidate supported by the Pakistan People's Party and for his previous connections with the Party (Judge Memon had been dismissed by Ziah in 1981).

9. Again, mention must be made of the case brought before the Supreme Court by Mrs. Bhutto, who urged that the proceedings instituted simultaneously against her in the Special Courts of Lahore and Karachi compelled her to make exhausting and expensive journeys to and fro between those two cities, which are over 15,000 kilometres apart, and asked for the proceedings to be conducted jointly in the court at Karachi, where she resides. Three of the Supreme Court judges heard the parties concerned and declared the request admissible, but the Government immediately changed the rules concerning audiences of the Special Courts so as to allow the courts to travel, and the Supreme Court on those grounds declared the request inapplicable. All the same, the Special Court in Lahore later refused to grant Mrs. Bhutto's request to stand trial in Karachi and the former Prime Minister is therefore compelled to make innumerable journeys incompatible with her activities as a member of parliament and leader of her party.

10. Many examples of malpractice are cited in Pakistan on the part of judges in the lower courts and even some High Court judges. Consequently, while the independence of many judges is unquestionable and acknowledged, others, and more particularly the judges appointed to the Special Courts, are regarded as agents of the country's rulers. To make things worse, in Pakistan judges are protected from any criticism by the contempt of court proceedings which are more and more widely resorted to and which the IFHR considers as seriously detrimental to freedom of information. Taking the same view, Judge Dorab Patel has several times publicly stressed that article 204 of the Constitution, which authorizes penal proceedings against those who criticize judgements or judges, even impartially, should be amended.

11. Paragraph 6 of the Basic Principles on the Independence of the Judiciary states that: "The principle of the independence of the judicary entitles and requires the judiciary to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected." The IFHR has noted a great many violations of this provision arising from the common practice of arbitrary arrest and detention often involving torture and ill-treatment.

12. Most of the persons arrested, often without a warrant, were subjected during their detention to torture by the police or by the army's special services. The Central Investigation Agency (CIA) is one of the branches of the police notorious for torturing detentees. Despite numerous complaints, police officers are rarely convicted and the penalties usually consist in transfers to other posts. The army's special services (Inter-Service Intelligence Agency - ISA) also commonly practise torture.

13. The treatment most often inflicted is to suspend accused persons by the manacles with which their hands are shackled behind their backs, causing dislocation of the shoulder joints, or to hang them head downwards for hours at a time. Several witnesses claim to have been forced to remain standing, night and day, for a week. Beatings, notably on the soles of the feet, electric shocks and burning with cigarettes are common practice. These physical tortures are accompanied, in selected cases, by threats of violence against the detainee's family.

14. Among those tortured we may cite the cases of Mr. Ranan Ali Danish, of the Pakistan Students' Federation (PSF) in Karachi, or Mr. Muhammed Sadiq Umran, a former minister in the Baluchistan Government, who were arrested in the autumn of 1990 and tortured for several weeks on CIA or SIA premises. The same applies to Mr. Shanawaz Shani, Mr. Maqbool Channah, Mr. Jahangir Ichang and Mr. Ejaz Ichoso, youth activists in the PPP some of whom were forced to remain standing for several days, beaten and given electric shocks. Public feeling was particularly stirred by the case of young Raheela Tiwana, an activist in the PSF, a student movement linked to the PPP, who was transferred to the psychiatric hospital in Karachi following the tortures she underwent during her detention.

15. The persistence of this situation is facilitated by resort to successive indictments. Thus it is common practice to draw up against accused persons an initial indictment (First Investigation Report) which allows them to be held in custody for a fortnight simply on the authority of a law officer (magistrate) and to prefer new charges against them when that time is up, so that they can be detained almost indefinitely with no real legal check.

16. In conclusion, the IFHR is urging upon the Pakistan authorities the need for strong action to put an end to the impunity enjoyed by the police and the army for their routine practice of torture and to compel them to respect the rules of penal procedure established to protect individual freedoms. Furthermore, the IFHR is calling upon the Pakistan Government to abolish the Special Courts, whose maintenance is incompatible with the right to a fair trial, the rights of the defence and the independence of the judiciary.

- - - - -

UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/Sub.2/1991/NGO/18
6 August 1991

ENGLISH
Original: FRENCH

COMMISSION ON HUMAN RIGHTS
Sub-Commission on Prevention
of Discrimination and
Protection of Minorities
Forty-third session
Agenda item 10 (a)

THE ADMINISTRATION OF JUSTICE AND THE HUMAN RIGHTS OF DETAINEES

QUESTION OF THE HUMAN RIGHTS OF PERSONS SUBJECTED TO ANY FORM OF DETENTION AND IMPRISONMENT

Written communication submitted by the International Federation of Human Rights, a non-governmental organization in consultative status (Category II)

The Secretary-General has received the following communication which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[30 July 1991]

ADMINISTRATION OF JUSTICE IN HONDURAS

1. The International Federation of Human Rights (IFHR) is concerned about the recent outbreak of political violence in Honduras. Although the Government has just signed an amnesty for 13 political prisoners, the Committee for the Defence of Human Rights in Honduras (CODEH) has, counted, five political assassinations, 96 cases of torture and 289 arbitrary or unlawful arrests in the past year. For the period from January to April 1991, it has counted 40 new cases of torture. These violations are made even worse by the fact that the remedy of habeas corpus recognized by article 182 of the Constitution of Honduras is not respected either by the military or police authorities or by the judiciary.

2. CODEH has heard testimony, which IFHR has published in a report, by 11 persons attesting to the torture to which such detainees are systematically subjected during a period of arbitrary detention in military or police premises which ranges from a few days to several months and during which they have no contact either with their family or with a lawyer or a doctor. This is the case of Mr. Carlos Armando Argueta Rivera, who was arrested by the National Investigation Department (DIN) in the town of Coloca (Lempira department) on 7 April 1990 and tortured during a one-month period of disappearance, and Mr. Juan José Baca Nuñez, a member of the beverage and allied industries' trade union who was arrested on 22 December 1990 and also tortured for two days.

3. The Committee for the Defence of Human Rights in Honduras has brought proceedings for 38 writs of habeas corpus since the beginning of the year. In three cases only, the prisoners have reappeared after a period of time which confirms the offence of unlawful detention. Habeas corpus is not immediate and is also not given effect "at any time, on any day", as required by the Constitution. To date, no judge has yet punished a member of the military for having violated this guarantee, whereas article 182 of the Constitution of Honduras characterizes detention without the remedy of habeas corpus as the "offence of unlawful detention".

4. The inviolability of the right to life is also guaranteed by article 65 of the Constitution of Honduras. However, it was gravely violated as a result of the execution on Monday, 22 July 1991, of Mr. Marco Tulio López Hernández, the son of the Chairman of the Committee of Families of Disappeared Persons in Honduras (COFADEH). It should be recalled that Mr. Enrique López Hernández, the brother of Mr. Marco Tulio López Hernández, disappeared in February 1984 after having been abducted by DIN agents. The applications for habeas corpus which were filed in order to determine his whereabouts have never had any success. IFHR also wishes to express fears about the fate of Professor Juan Almendares Bonilla, who has been threatened several times since he denounced the murder of Mr. Marco Tulio López Hernández. This arbitrary execution is in addition to those of Mr. Eduardo Ramon Salgado on 2 March 1990, Mr. Walter David Cruz Torres on 26 May 1990 and Mr. José Vicoriano Castillo Enceda, who died in detention as a result of the torture to which he was subjected after his arrest on 3 September 1990.

5. IFHR appeals to the Honduran authorities to punish those responsible for violations of the right to habeas corpus and to ratify the International Covenant on Civil and Political Rights and its Optional Protocol. IFHR also considers that the Working Group on Detention should continue and go more deeply into its consideration of the question of the inalienable nature of habeas corpus.

ADMINISTRATION OF JUSTICE IN EL SALVADOR

6. In El Salvador, the human rights situation does not seem to have improved since the signature of the San José agreements or even since the last legislative elections. Rather, the possibility of the monitoring of respect for these agreements by a United Nations ad hoc commission seems to be causing panic among the armed forces that is leading to further military repression without judicial supervision. On the pretext of the need to combat the

querrilla forces, the army is terrorizing the population of the regions it controls. The Atlasatl élite battalion has particularly distinguished itself in repressive operations affecting the department of Chalatenango in the northern part of the country, where there have been reports of several persons wounded and many unlawful arrests followed by torture. Such practices are also common in the departments of Cuscatlan and Cabanas in the central part of the country and in the departments of San Vicente, La Libertad and Insulután in the south. In early July 1991, 13 militant members of the Frente Farabundo Martí who had been taken prisoner in an ambush were executed in violation of article 13 of the Geneva Convention relative to the Treatment of Prisoners of War.

7. The duration of "administrative detention", which was set at 12 hours by the San José agreement, is never respected. This period of detention is systematically accompanied by torture, sometimes to death.

8. According to the Human Rights Commission of El Salvador and Lutheran Legal Aid, lawyers who have the right to communicate with prisoners during this period have never been able to exercise this right. They are imprisoned or harassed themselves if they insist on gaining access to prisoners.

9. The Minister of Defence threatened the lawyers representing the families of six Jesuits and the two women murdered in November 1989, Mr. Henry Campos and Mr. Sidney Blanco, with a libel suit if they maintained their unfounded accusations against the Armed Forces High Command. The lawyers had submitted a document placing these executions in the context of the 70,000 non-combatant civilians killed in the past six years.

10. The activities of paramilitary groups have also increased sharply. They carry out large numbers of arrests which usually end in the prisoners' multulation, execution and disappearance. Moreover, two members of the Marginal Communities' Council were executed in San Salvador, on 6 July 1991 while, on 10 July 1991, there was an attack on a leader of the observer mission appointed by the United Nations on 20 May 1991 to monitor the progress of the peace talks between the Government and the guerrillas. The growing involvement of paramilitary groups is a sign that the repressive functions performed by the army to guarantee the total impunity of the Government and the members of the armed forces are being transferred to them. In the light of these facts, IFHR urges the Sub-Commission to continue considering the situation of human rights in El Salvador at its forty-fourth session.

11. IFHR also urges the Sub-Commission to take up the question of impunity, for example, by appointing a rapporteur to carry out a study of this recurrent practice: since 1985, when Mr. Louis Joinet submitted his study on amnesty, which dealt with the question indirectly, impunity and its consequences have been outside the scope of the Sub-Commission's activities.

- - - - -